IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23595 of 2007
With
SPECIAL CIVIL APPLICATION No. 23904 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ?NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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PRATIMA B THAKKAR - Petitioner(s)
Versus
THE STATE BANK OF INDIA - Respondent(s)

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Appearance :
MR VISHWAS K SHAH for Petitioner(s) : 1,
MR SH ALMAULA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 17/12/2007

ORAL JUDGMENT

1 As both the petitions raise a common issue and emanate from a common set of facts, both the petitions are taken up

for final hearing and disposal today. **Rule.** Learned Advocate for the respondent bank is directed to waive service.

2 The petitioner of Special Civil Application No. 23904 of 2007 is the husband of petitioner of Special Civil Application No. 23595 of 2007. Both the petitioners have challenged two Notices dated 23.09.2004 and 16.07.2007 issued to each of the petitioners under the provisions of Section 13(2) of *The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (the Securitisation Act) by the respondent bank.

3 The learned Advocate for the petitioner has raised the following three issues in each of the petitions :

> *"(i) Whether it is open to the respondent-Bank to issue two Notices under the same section for the same purpose.*
> *(ii) Does the Notice issued by the respondent – Bank satisfy the ingredients of the Notice required by provisions of Section 13(2) read with Section 13(3) of the Securitisation Act.*
> *(iii) The Notice issued by the respondent-Bank is in a standard proforma without scoring out the inapplicable portion and hence, is based on non-application of mind rendering the Notice bad in law."*

However, the Court had issued Notice on 17.09.2007 only in relation to issue Nos. 2 and 3. The respondent Bank has filed

Affidavit-in-Reply dated 19.10.2007 followed by further affidavit dated 11.12.2007.

4 Heard the learned Advocates for the parties. It is an accepted position that petitioner of Special Civil Application No. 23595 of 2007, Smt. Pratima B. Thakkar, availed of a term loan for housing from the respondent Bank and the husband Shri Bipinkumar G. Thakkar, the petitioner of Special Civil Application No. 23904 of 2007, is the guarantor to the said transaction.

5 The learned Advocate for the respondent Bank is not in a position to dispute the fact that both the sets of notices are issued both to the borrower and the guarantor and the notices are identically worded. However, what is more material is the fact that in the body of the notices the irrelevant portion in relation to the facilities enjoyed by the borrower and for which default the respondent Bank has issued the impugned notices has not been scored out. In fact the first paragraph of the notices reads about various credit facilities by way of financial assistance against various assets creating security interest in favour of the Bank as mentioned. Thereafter, it is stated that the relevant particulars of the credit facilities and the security

agreement(s)/document(s) executed are stated in schedules 'A' & 'B'. Thus it is apparent that the impugned notices are vague and reflect non application of mind as inapplicable portions have not been scored off. In fact as can be seen from the following averments - "*It is further submitted that the Respondent Bank has issued total four notices to the borrowers for realization of same secured assets namely Flat No.6/1103 situated at River Towers, Kunj Co-operative Housing Society Limited, Surat as the Housing Term Loan was taken by the wife of the petitioner and petitioner gave guarantee for the said loan"* as appearing in paragraph No. 3 of the further Affidavit-in-Reply dated 11.12.2007 it is only in the subsequent affidavit that the respondent Bank specifies the status of the two petitioners, wife being the borrower and respondent being the guarantor qua the housing loan transaction entered into by the wife. Even the schedule which gives details of security documents refers to various documents, which by their very nature could not have been executed by both the petitioners, considering their respective status in relation to the financial facility availed of by the wife Smt. Pratima B.Thakkar.

6 In the aforesaid set of facts and circumstances of the case, without entering into any discussion on merits of the

respective submissions suffice it to state that the impugned notices issued in case of both the petitioners cannot be permitted to operate. Notices dated 23.09.2004 and 16.07.2007 issued under Section 13(2) of the Securitisation Act are hereby quashed and set aside. It will be open to the respondent Bank to initiate fresh proceedings in accordance with law, if the bank so desires.

7 The petitions are allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs. Registry to place copy of this judgment in connected matter.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt